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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 17

Application Number: 09/428,035
Filing Date: October 27, 1999
Appellant(s): MCGRADY ET AL.

Ralph E. Jocke
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 04 November 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because Appellant merely points out differences in what the claims cover and does not present arguments as to why each of the claims are separately patentable (See for example, arguments in relation to claims 2, 6, 7, 8, and 13). It is also respectfully noted that the Examiner sent a notice of non-compliance to offer the Appellant an opportunity to fix the problem, but Appellant maintained that none the claims stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,857,716	GOMBRICH et al.	08-1989
4,604,847	MOULDING, Jr. et al.	08-1986

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. Claims 4, 6-8, 11-13, 16-18, and 22-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gombrich et al. (4,857,716) for substantially the same reasons set-forth in the previous Office Actions (paper numbers 5 and 7). Further reasons appear below.

(A) As claim 4, Gombrich discloses a patient identification system comprising the steps of:

(a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8, col. 8, lines 10-15, and fig. 1);

(b) printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name (Gombrich; col. 12, lines 66-67, col. 13, lines 1-2, and fig. 4; The examiner interprets this as a form of report generation);

(c) scanning patient specific bar code identifiers from a patient chart (Gombrich; col. 13, lines 32-37);

(d) entering and recording a drug prescription as being approved and ready for dispensing (Gombrich; col. 14, lines 22-25; The examiner interprets Gombrich's "being approved" to be a form of "taking"); and

(e) recording the administration of items to patients (Gombrich; col. 16, lines 3-4; the examiner interprets Gombrich's "administration" to be a form of "having been given.")

Also note, an embodiment of the bar code reading device might include a programmed

microprocessor and its associated memory and real time clock mounted in a hand held housing wherein a key pad is provided for entry of data and a LCD display will be provided for displaying information (Gombrich; col. 11, lines 4-44 and figures 1 and 10-12).

(B) As per claim 6, Gombrich discloses:

(e) an embodiment of the bar code reading device might include a programmed microprocessor and its associated memory and real time clock mounted in a hand held housing wherein a key pad is provided for entry of data and a LCD display will be provided for displaying information (Gombrich; col. 11, lines 4-44 and figures 10-12).

(C) As per claims 7 and 8, Gombrich discloses:

(e) a means for scanning the patient identifier bar code on the patient's identification bracelet (Gombrich; figure 3 and col. 15, lines 12-16).

(D) As per claims 11 and 12, Gombrich discloses:

(a) a means for storing a prescription prescribing drug treatment for the patient (Gombrich; col. 13, lines 32-39);

(b) generating bar code labels for drugs in prescription with a printer (Gombrich; col. 14, lines 7-15); and (The examiner interprets this as a form of report generation)

(e) scanning drug bar codes during administration with a bar code reader (Gombrich; col. 15, lines 58-62).

(E) As per claim 13, Gombrich discloses an alternate embodiment of the invention consisting of a portable handheld terminal used in conjunction with a wall mounted base station. The base station includes a means for communicating with the portable handheld terminal and the computer system (Gombrich; col. 23, lines 51-68 and figures 30-34).

(F) As per claim 16, Gombrich reference discloses a patient identification system comprising the steps of:

(a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8);

(b) a means for storing a prescription prescribing drug treatment for the patient (Gombrich; col. 13, lines 32-39);

(c) generating custom bar code labels for drugs in prescription with a printer (Gombrich; col. 14, lines 7-15); and (The examiner interprets this as a form of report generation);

(d) scanning the patient's identification bar code on the patient's prescription with a bar code reader (Gombrich; col. 13, lines 57-61 and col. 14, lines 22-26);

(e) scanning the drug identifier bar code on the drug package with a bar code reader (Gombrich; col. 14, lines 22-24);

(f) a means for entering and recording a drug prescription as being approved and ready for dispensing (Gombrich; col. 14, lines 22-25); (The examiner interprets Gombrich's "being approved" to be a form of "taken for use.")

(g) a means for the administering the prescribed drug (Gombrich; col. 15, lines 9-67); and

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(h) a means for recording the administration of items to patients (Gombrich; col. 16, lines 3-4). (The examiner interprets Gombrich's "administration" to be a form of "has been used.")

(G) As per claim 17 Gombrich discloses:

(c) generating custom bar code labels for drugs in prescription with a printer (Gombrich; col. 14, lines 7-15); and (The examiner interprets this as a form of report generation)

(d) scanning drug identifier bar code on the drug package with a bar code reader (Gombrich; col. 14, lines 22-26).

(H) As per claim 18, Gombrich teaches recording the administration of items to patients (Gombrich; col. 16, lines 3-4; The examiner interprets Gombrich's "administration" to be a form of "having been given.") Also note, an embodiment of the bar code reading device might include a programmed microprocessor and its associated memory and real time clock mounted in a hand held housing wherein a key pad is provided for entry of data and a LCD display will be provided for displaying information (Gombrich; col. 11, lines 4-44 and figures 10-12).

(I) As per claims 22, 23, and 25, Gombrich discloses:

(h) an embodiment of the bar code reading device might include a programmed microprocessor and its associated memory and real time clock mounted in a hand held housing (Gombrich; col. 11, lines 4-44 and figures 10-12). (The examiner interprets the nurse using this device as being adjacent to bedside of patient).

(J) As per claim 24, Gombrich discloses:

(h) a bar code reader for scanning the patient identifier bar code on the patient's identification bracelet (see figure 3 and Gombrich; col. 15, lines 12-16).

(K) As per claim 26, Gombrich reference discloses a patient identification system comprising the steps of:

(a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8);

(b) a means for storing a prescription prescribing drug treatment for the patient (Gombrich; col. 13, lines 32-39);

(c) scanning the patient's identification bar code on the patient's prescription with a bar code reader (Gombrich; col. 13, lines 57-61);

(d) scanning the drug identifier bar code on the drug package with a bar code reader (Gombrich; col. 14, lines 22-24);

(e) a means for entering and recording a drug prescription as being approved and ready for dispensing (Gombrich; col. 14, lines 22-25); (The examiner interprets Gombrich's "being approved" to be a form of "taken for use.")

(f) a means for the administering the prescribed drug (Gombrich; col. 15, lines 9-67); and

(g) a means for recording the administration of items to patients (Gombrich; col. 9, lines 54-67 and col. 16, lines 3-4; The examiner interprets Gombrich's "administration" to be a form of "has been used.") Also note, Gombrich teaches terminals that can located

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locally and remotely as required, including at nurse's stations (Gombrich; col. 8, lines 23-28; The Examiner interprets the nurse's station as being "positioned in generally fixed relation adjacent a bedside area of the one patient.")

(L) As per claim 27, Gombrich discloses the transmission of data between a portable bar code reading device and remote terminals (Gombrich; col. 9, lines 57-65 and figure 6).

Claim Rejections - 35 USC § 103

2. Claims 1-3, 5, 14-15, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gombrich, et al. (4,857,716) as applied to claim 16 above and given in view of Moulding, Jr. et al. (4,604,847), for substantially the same reasons set-forth in the previous Office Action (paper number 7). Further reasons appear below.

(A) As per claim 1, Gombrich discloses a patient identification system comprising the steps of:

- (a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8, col. 8, lines 10-15, and fig. 1);
- (b) printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name (Gombrich; col. 12, lines 66-67, col. 13, lines 1-2, and fig. 4; The examiner interprets this as a form of report generation);

(c) scanning patient specific bar code identifiers from a patient chart (Gombrich; col. 13, lines 32-37);

(d) entering and recording a drug prescription as being approved and ready for dispensing (Gombrich; col. 14, lines 22-25; The examiner interprets Gombrich's "being approved" to be a form of "taking."); and

(e) recording the administration of items to patients (Gombrich; col. 16, lines 3-4; The examiner interprets Gombrich's "administration" to be a form of "having been given.")

Gombrich fails to expressly teach a report that includes patient identifiers and machine-readable indicia corresponding to at least one item prescribed for the patient. However, this feature is old and well known in the art, as evidenced by Moulding's teachings with regards to this limitation (Moulding; col. 2, lines 16-22 and col. 10, lines 56-58; the examiner interprets "means for recording" as a form of "generating a report.") It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the system taught by Gombrich with Moulding's teaching with regards to this limitation, with the motivation of indicating the characteristics of the medicine contained in a package (Moulding; col. 1, lines 62-64).

(B) As per claim 2, Gombrich discloses:

(a) a means for storing a prescription prescribing drug treatment for the patient (Gombrich; col. 13, lines 32-39);

(d) scanning drug identifier bar codes with a bar code reader (Gombrich; col. 14, lines 22-25).

(C) As per claims 3 and 5 Gombrich discloses:

(e) a means for scanning drug bar codes during administration (Gombrich; col. 15, lines 58-62; The examiner interprets the nurse as being adjacent to the bed of the patient).

(D) As per claim 14, Gombrich discloses a patient/drug schedule being generated upon drugs being approved and ready for dispensing and prior to administration (Gombrich; col. 14, lines 51-61; The examiner interprets this as a form of report generation)

(E) As per claim 15, Gombrich discloses a system for the control of controlled drugs such as narcotics comprising the steps of:

(a) a means for reporting and controlling accessibility to narcotics (Gombrich; col. 17, lines 4-5; The examiner interprets this as storing data representative of a plurality of authorized users since only authorized users can obtain the narcotics)

(b) a means for scanning a nurse's badge to identify her to the system (Gombrich; col. 17, lines 8-9); and

(c) a means for checking out drugs from a locked drawer or drug cart and placing them into the nurse's inventory, where it will remain until she administers the drug to the patient (Gombrich; col. 17, lines 11-14; The examiner interprets this as dispensing medical item to user only if authorized and a form of report generation indicative that authorized user has taken drug.)

(F) As per claim 28, Gombrich teaches printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name (Gombrich; col. 12, lines 66-67, col. 13, lines 1-2, and fig. 4; The examiner interprets this as a form of report generation) but fails to expressly teach a report that includes patient identifiers and machine-readable indicia corresponding to at least one item prescribed for the patient. However, this feature is old and well known in the art, as evidenced by Moulding's teachings with regards to this limitation (Moulding; col. 2, lines 16-22 and col. 10, lines 56-58; the examiner interprets "means for recording" as a form of "generating a report.") It is respectfully submitted, that it would have been obvious, to one having ordinary skill in the art at the time the invention was made, to expand the system taught by Gombrich with Moulding's teaching with regards to this limitation, with the motivation of indicating the characteristics of the medicine contained in a package (Moulding; col. 1, lines 62-64).

3. Claims 9-10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gombrich, et al. (4,857,716) as applied to claim 7 above.

(A) As per claims 9 and 10, Gombrich discloses the placing of patient identification bar codes on the patient's identification bracelet (col. 8, lines 66-68). Gombrich fails to expressly disclose the placement of patient identifier labels on the patient bed or on a bedside chart. It is respectfully submitted, that one having ordinary skill in the art at the time of the invention would have found it obvious to have placed patient identifier labels on the patient's bed or bed side chart with the motivation of providing such data in a highly visible location in case of patient bracelet misplacement or damage.

(B) As per claim 19, Gombrich reference discloses a patient identification system comprising the steps of:

(a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8);

(b) a means for storing a prescription prescribing drug treatment for the patient (Gombrich; col. 13, lines 32-39);

(c) scanning the patient's identification bar code on the patient's prescription with a bar code reader (Gombrich; col. 13, lines 57-61);

(d) scanning the drug identifier bar code on the drug package with a bar code reader (Gombrich; col. 14, lines 22-24);

Gombrich discloses the placing of the drug, upon approval and ready for dispensing and prior to administration, in the patient's drug cart (col. 14, lines 51-62). Gombrich fails to expressly disclose the dispensing of one medical item from a medical item dispenser. It is respectfully submitted, that one having ordinary skill in the art at the time of the invention would have found it obvious to dispense the one medical item from a medical dispenser after scanning the drug identifier and patient bar codes with the motivation of providing drug inventory control.

(C) As per claim 20, Gombrich reference discloses a patient identification system comprising the steps of:

(a) storing patient data in memory devices in operative connection to a programmed general purpose computer (Gombrich; col. 2, lines 5-8);

(b) a means for storing a prescription prescribing drug treatment for the patient

(Gombrich; col. 13, lines 32-39);

(c) scanning the patient's identification bar code on the patient's prescription with a bar code reader (Gombrich; col. 13, lines 57-61);

(d) scanning the drug identifier bar code on the drug package with a bar code reader

(Gombrich; col. 14, lines 22-24);

(e) a means for entering and recording a drug prescription as being approved and ready for dispensing (Gombrich; col. 14, lines 22-25); (The examiner interprets Gombrich's "being approved" to be a form of "taken for use.")

(f) a means for the administering the prescribed drug (Gombrich; col. 15, lines 9-67); and

(g) a means for recording the administration of items to patients (Gombrich; col. 16, lines 3-4). (The examiner interprets Gombrich's "administration" to be a form of "has been used.")

Gombrich discloses the placing of the drug, upon approval and ready for dispensing and prior to administration, in the patient's drug cart (col. 14, lines 51-62). Gombrich fails to expressly disclose the dispensing of one medical item from a medical item dispenser. It is respectfully submitted, that one having ordinary skill in the art at the time of the invention would have found it obvious to dispense the one medical item from a medical dispenser after scanning the drug identifier and patient bar codes with the motivation of providing drug inventory control.

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(D) As per claim 21, Gombrich discloses a system for the control of controlled drugs such as narcotics comprising the steps of:

(a) a means for reporting and controlling accessibility to narcotics (Gombrich; col. 17, lines 4-5); (The examiner interprets this as storing data representative of a plurality of authorized users since only authorized users can obtain the narcotics)

(b) a means for scanning a nurse's badge to identify her to the system (Gombrich; col. 17, lines 8-9);

(c) a means for checking out drugs from a locked drawer or drug cart (Gombrich; col. 17, line 11); and (The examiner interprets this as dispensing item only if user corresponds to one authorized user)

(d) a means for placing narcotic drug into the nurse's inventory (Gombrich; col. 17, lines 12-14). (The examiner interprets this as storing data representative that the medical item has been taken by the one authorized user).

(11) Response to Argument

(A) Appellant argued that the bar code reader taught by Gombrich cannot constitute the recited portable terminal, in reference to claim 4. The appellant further argues that the bar code reader is not a portable terminal capable of receiving inputted data representative of the giving of a medical item to a patient. Nor does the bar code reader store data representative of the giving of the medical item therein. Nor is the bar code reader capable of transferring data representative of the giving of the medical item, from the bar code reader to a computer so that the computer is

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operative to include in a data store the data representative of the medical item having been given to the patient.

In response, it is respectfully noted that the Appellant has not provided a clear definition of the word "terminal." Therefore, during examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (See MPEP § 2111). As a result, the Examiner respectfully notes that it is commonly known in the art that a terminal is defined as a combination of a video adapter, monitor, and a keyboard (See Microsoft computer dictionary 5th edition, page 515, attached at the end of the previous office action). Gombrich teaches that the "bar code reader devices has a key pad" and "LCD display for displaying information and status" (Gombrich; col. 11, lines 6-15). It is respectfully submitted that the bar code reader therefore is a form of "portable terminal."

In response to the Appellant's arguments that the "bar code reader is not capable of receiving inputted data representative of giving of a medical item to a patient," the examiner respectfully submits that the Appellant ignores that the "bar code reading device" is used for "receiving inputted data representative of the giving of a medical item to a patient" (Gombrich; col. 16, lines 3-8).

In response to the Appellant's arguments that the "bar code reader is not capable of storing data representative of giving of a medical item to a patient," the examiner respectfully submits that the Appellant ignores that the "bar code reading device" has memory and therefore

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is “capable of storing data representative of giving of a medical item to a patient” (Gombrich; col. 11, lines 6-44).

In response to the Appellant’s arguments that the “bar code reader is not capable of transferring data representative of giving of a medical item from the bar code reader to the computer,” the examiner respectfully submits that Gombrich does teach that data is transferred from the bar code reading device and the computer (Gombrich col. 12, lines 48-51).

(B) Appellant argued that the Microsoft Dictionary, which has a 2002 publication date, does not constitute prior art against Appellants claimed invention and must be disregarded.

In response MPEP § 706.07(a) specifically states that references cited to show a universal fact need not be available as prior art before applicant’s filing date. Since the appellant failed to provide a clear definition of “terminal” in the specification, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (See MPEP § 2111). Therefore, it is respectfully submitted that the Examiner did not use the dictionary as prior art, but used the dictionary to support the Examiner’s interpretation of the term “terminal.” Furthermore, a 1994 edition of the Microsoft computer dictionary also shows that a terminal is defined as a combination of a video adapter, monitor, and a keyboard (See Microsoft computer dictionary 5th edition, page 385, attached at the end of the Examiner’s Answer).

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(C) Appellant argued that printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name and generating bar code labels for drugs in prescription with a printer' are not forms of report generation, in reference to claim 4.

In response, it is respectfully noted that the Appellant has not provided a clear definition of the word "terminal." Therefore, during examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (See MPEP § 2111). As a result, the Examiner respectfully notes that it is commonly known in the art that a report is defined as the presentation of information about a given topic, typically in printed form (See Microsoft computer dictionary 5th edition, page 450, attached at the end of the previous office action). Thus, it is respectfully submitted, that "printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name" and "generating bar code labels for drugs in prescription with a printer" are indeed forms of "report generation" (Gombrich; col. 12, line 66-col. 13, line 2, col. 14, lines 51-61, and figure 4). Furthermore, a 1994 edition of the Microsoft computer dictionary also shows that a report is defined as a the presentation of information about a given topic, typically in printed form (See Microsoft computer dictionary 5th edition, page 338, attached at the end of the Examiner's Answer).

(D) Appellant argued that Gombrich would not teach generating a report, where the report includes both machine readable indicia corresponding to at least one of the patients and machine

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readable indicia corresponding to at least one item prescribed for the patient, in reference to claim 12.

In response, the examiner respectfully notes that claim 12 does not require “both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient” (i.e. two separate machine readable indices). As presently claimed in step (b) of claim 12, “generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients and including in the report, machine readable indicia corresponding to at least one medical item prescribed for the patient” the examiner respectfully submits, claim 12 does not require separate machine readable indices. It is respectfully noted that a single machine-readable indicia that corresponds to both the patients and at least one medical item prescribed to the patient would meet the claim limitation. As such, Gombrich does teach this feature. At col. 14, lines 7-15, Gombrich teaches that custom bar codes can be generated. These custom bar codes not only correspond to the prescribed medication but also correspond to a patient’s identity. It is respectfully a bar code that corresponds to both a medical item prescribed for a patient and a patient’s name, does meet the limitation “generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients and including in the report, machine readable indicia corresponding to at least one medical item prescribed for the patient.”

(E) Appellant argued that “Gombrich does not teach generating a report” in reference to claim 16. The appellant further argues that “Gombrich does not teach generating a report including machine readable indicia indicative of a medical item prescribed for a patient, wherein

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the report further includes information indicative of the patient.” Furthermore, the appellant argues that “Gombrich does not teach reading with a reading device the machine readable indicia on the report.”

In response, it is respectfully noted that the Appellant has not provided a clear definition of the word “terminal.” Therefore, during examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (See MPEP § 2111). As a result, the Examiner respectfully notes that it is commonly known in the art that a report is defined as the presentation of information about a given topic, typically in printed form (See Microsoft computer dictionary 5th edition, page 450, attached at the end of the previous office action). Thus, it is respectfully submitted, that “generating custom bar code labels for drugs in prescription with a printer” is indeed form of “generating a report.”

In response to appellant’s argument that, “Gombrich does not teach generating a report including machine readable indicia indicative of a medical item prescribed for a patient, wherein the report further includes information indicative of the patient.” The examiner respectfully submits, that Gombrich does teach this feature. At col. 14, lines 7-15, Gombrich teaches that custom bar codes can be generated. These custom bar codes not only correspond to the prescribed medication but also correspond to a patient’s identity. It is respectfully a bar code that corresponds to both a medical item prescribed for a patient and a patient’s name, does meet the limitation “a report including machine readable indicia indicative of a medical item

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prescribed for a patient, wherein the report further includes information indicative of the patient.”

In response to appellant’s argument that, “Gombrich does not teach reading with a reading device the machine readable indicia on the report.” The examiner respectfully submits, that Gombrich does teach this feature. At col. 14, lines 22-24, Gombrich’s teaches scanning the drug identifier bar code on the drug package with a bar code reader. As such, Gombrich does teach “reading with a reading device the machine readable indicia on the report.”

Moreover, it is respectfully noted the Examiner never stated in the rejections of claims 1-28 that any of the limitations of claims 1-28 was inherent.

(F) Appellant argued that, “Gombrich does not teach generating a report including both machine readable indicia indicative of a medical item prescribed for a patient and machine readable indicia indicative of the patient,” in reference to claim 17. Appellant further argues that, “Gombrich does not teach reading with a reading device the machine readable indicia on the report.

In response, the examiner respectfully notes that claim 17 does not require “both machine readable indicia indicative of a medical item prescribed for a patient and machine readable indicia indicative of the patient” (i.e. two separate machine readable indices). As presently claimed in step (c) of claim 17, “generating a report including machine readable indicia indicative of a medical item prescribed for a patient and including on the report machine readable indicia of the one patient,” the examiner respectfully submits, claim 17 does not require separate machine readable indices. It is respectfully noted that a single machine readable indicia

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that corresponds to both the patients and at least one medical item prescribed to the patient would meet the claim limitation. As such, Gombrich does teach this feature. At col. 14, lines 7-15, Gombrich teaches that custom bar codes can be generated. These custom bar codes not only correspond to the prescribed medication but also correspond to a patient's identity. It is respectfully a bar code that corresponds to both a medical item prescribed for a patient and a patient's name, does meet the limitation "a report including machine readable indicia indicative of a medical item prescribed for a patient and including on the report machine readable indicia indicative of the one patient."

In response to appellant's argument that, "Gombrich does not teach reading with a reading device the machine readable indicia on the report," the examiner respectfully submits, that Gombrich does teach this feature. At col. 14, lines 22-24, Gombrich's teaches scanning the drug identifier bar code on the drug package with a bar code reader. As such, Gombrich does teach "reading with a reading device the machine readable indicia on the report."

(G) Appellant argued that, "Gombrich does not teach storing data indicative that a medical item has been used," in reference to claim 18. In response, the examiner respectfully submits that the Appellant ignores that the "bar code reading device" has memory and therefore is "capable of storing data representative of giving of a medical item to a patient" (Gombrich; col. 11, lines 6-44).

(H) Appellant argued that, "Gombrich does not teach positioning a terminal at a patient's bedside" in reference claim 26. Appellant further argues that, "Gombrich does not teach (e)."

In response, the examiner respectfully submits that the Appellant ignores that the terminals might be located remotely as required, including at nurse's stations (Gombrich; col. 8, lines 26-30). Since it is readily apparent that the data stored on a terminal typically is gathered and updated for a unique individual within a hospital environment, it would have required no hindsight to locate the terminal as close as possible to the individual, such as bedside.

Furthermore, as presently claimed, there is no requirement for the terminal to be positioned at a bedside. As presently claimed, "a bedside terminal positioned in a generally fixed relation adjacent a bedside area of the one patient" only requires the terminal to be "in a generally fixed relation adjacent" to a bedside and not positioned "at" a bedside area. It is well known that the term adjacent means close proximity but not necessarily contact (See Webster's dictionary). As such, it is respectfully submitted that a terminal at a nurse's station does meet this limitation.

In addition, as presently claimed, , "a bedside terminal positioned in a generally fixed relation adjacent a bedside area of the one patient" does not require the terminal to be at a fixed location. It is unclear what the Applicant means by "generally fixed." Gombrich teaches that the portable bar code reading device can be attached to the patient's bed or chart (Gombrich; col. 8, lines 59-65) and col. 11, lines 55-58). It is unclear if this constitutes Applicant's "generally fixed" limitation.

In response to appellant's argument that, "Gombrich does not teach (e)," the examiner respectfully submits, that Gombrich does teach this feature. At col. 14, lines 22-25, Gombrich's teaches approving the drug prescription for a particular patient. Then at col. 14, lines 51-61, Gombrich teaches that, upon approving and after all drugs have been placed in patient's cart, a

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patient/drug schedule or assignment sheet might be printed for each nurse, giving names of patients, room numbers and drugs to be dispensed by time of day and dosage for each nurse's shift. It is respectfully noted, that these teachings of Gombrich clearly teach "storing in the data store, data representative that the at least one medical item has been taken for use by the one patient."

(I) Appellant argued that "Gombrich's printing on a sheet of bar code labels, patient specific bar code identifiers and the patient's name' and 'Moulding's means for recording'" are not "forms of report generation" in reference to claim 1. Appellant further argues that "Gombrich and Moulding would not teach generating a report, where the report includes both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient" and "reading the machine readable indicia on the report corresponding to a patient with a reading device." Appellant also argues that "Moulding is non analogous art" and that "Gombrich does not have any need of the teachings of Moulding." Finally, Appellant argues that "the action is also devoid of any teaching, suggestion, or motivation for combining the references to have produced the recited invention" and "the prior art does not suggest the desirability of the combination."

In response, it is respectfully noted that the Appellant has not provided a clear definition of the word "terminal." Therefore, during examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir.

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1989) (See MPEP § 2111). As a result, the Examiner respectfully notes that it is commonly known in the art that a report is defined as the presentation of information about a given topic, typically in printed form (See Microsoft computer dictionary 5th edition, page 450, attached at the end of the previous office action). Thus, it is respectfully submitted, that “Gombrich’s printing on a sheet of bar code labels, patient specific bar code identifiers and the patient’s name” and “Moulding’s means for recording the characteristics of the medicine in the package as indicated by the machine readable code, the time the code was read, the identity of the patient, etc” are indeed forms of “report generation.”

As per the Appellant’s arguments that “Gombrich and Moulding would not teach generating a report, where the report includes both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient.” In response, the examiner respectfully submits, that as shown below, the combined system of Gombrich and Moulding do teach this limitation.

	Report with Patient Identifier	Machine readable indicia corresponding to patient	Report with item prescribed for patient	Machine readable indicia corresponding to item prescribed for patient
Gombrich	Col. 12, line 66- col. 13, line 2	Col. 12, line 66- col. 13, line 2		
Moulding	Col. 12, lines 16- 22		Col. 12, lines 16- 22	Col. 12, lines 16- 22

In addition the examiner respectfully notes that Gombrich also teaches a report including a bar code label corresponding to “both” the patient and at least one item prescribed for the patient (Gombrich; col. 14, lines 7-15).

As per the Appellant’s arguments that “Gombrich nor Moulding teach reading the machine readable indicia on the report corresponding to a patient with a reading device,” the examiner respectfully submits, that Gombrich does teach this feature. At col. 13, lines 32-37 and col. 14, lines 22-24, Gombrich teaches reading bar codes relating to the patient with a bar code reader. As such, Gombrich does teach “reading with a reading device the machine readable indicia on the report corresponding to a patient.”

As per the Appellant’s arguments that “Moulding is non analogous art” and that “Gombrich does not have any need of the teachings of Moulding,” the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. And although the motivation or suggestion to make modifications must be articulated, it is respectfully submitted that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969). The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re*

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Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) ___ non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

In the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specifically support that particular motivation. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

In addition, the Examiner notes that Moulding was brought in just to show that a report including machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient would have been obvious over the teachings of Gombrich. In particular, Gombrich already teaches a report including machine readable indicia corresponding to at least one patient (col. 12, line 66-col. 13, line 2) and a report including machine readable indicia corresponding to both at least one patient and at least one item prescribed for the patient (col. 14, lines 7-15). However, Gombrich failed to expressly teach a single report including different machine readable indices corresponding to this information. For this reason Moulding's teachings with regards to a report was used. Specifically, Gombrich's teaching (i.e., a report including patient identifiers and bar codes corresponding to the patients) in combination with Moulding (i.e., a report including patient identifiers and bar codes corresponding to medication for at least one patient) would meet the recited limitation of "a report that includes machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient."

As per, Appellant's argument that "the action is also devoid of any teaching, suggestion, or motivation for combining the references to have produced the recited invention" and "the prior art does not suggest the desirability of the combination," the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specifically support that particular motivation. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and

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scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

(J) Appellant argued that “neither of the applied references, taken alone or in combination, teach or suggest reading machine readable indicia corresponding to a medical item with a reading device, especially where the machine readable indicia corresponding to the medical item is included in a report with machine readable indicia corresponding to at least one of the patients” in reference to claim 2.

In response, the examiner notes that claim 2 is dependent on claim 1. As shown above in the response to arguments in reference to claim 1, a report including machine readable indicia corresponding to the medical item and machine readable indicia corresponding to at least one of the patients, would have been obvious to one with ordinary skill in the art. As such, Gombrich’s teaching with regards to using a bar code reader to read data of the report (Gombrich; col. 14, lines 22-25) would meet “reading machine readable indicia corresponding to a medical item with a reading device, especially where the machine readable indicia corresponding to the medical item is included in a report with machine readable indicia corresponding to at least one of the patients.”

(K) Appellant argued that “neither of the applied references, taken alone or in combination, teach or suggest that generating a report includes operating a printing device to include in the

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report both machine readable indicia corresponding to a patient and machine readable indicia indicative of a medical item prescribed for the patient,” in reference to claim 28.

In response, the examiner respectfully submits that the combined teaching of Gombrich and Moulding, as shown above in the response to arguments in reference to claim 1 and incorporated herein, teach generating a report that includes both machine readable indicia corresponding to a patient and machine readable indicia indicative of a medical item prescribed for the patient. As per the recitation of operating a printing device, note Gombrich teaches using a printer to print the report (col. 12, line 66-col. 13, line 2).

(L) Appellant argues that “Gombrich does not teach or suggest dispensing a medical item from a medical item dispenser responsive to reading machine readable indicia on a report in inputting to a computer data corresponding to at least one medical item prescribed for the one patient” and that “it follows that the alleged modification of Gombrich (and the rejection) is based on hindsight reconstruction of the recited invention based on Appellant’s disclosure,” in reference to claims 19-21.

In response, the Examiner respectfully notes that the cited reference was never applied as a reference under 35 U.S.C. 102 against amended claims 19, and 20. As such, the Examiner respectfully submits that the issue at hand is not whether the applied prior art specifically teaches the claimed features, *per se*, but rather, whether or not the prior art, when taken in combination with the knowledge of average skill in the art, would put the artisan in possession of these features. Regarding this issue, it is well established that references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ

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545 (CCPA 1969). The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lahu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

In the instant case, Gombrich discloses the object of one embodiment of the present invention is to provide automatic billing and/or inventory control (Gombrich; col. 2, lines 57-60). The Examiner admitted that Gombrich fails to expressly teach a medical item dispenser. However, at col. 16, line 67-col. 17, line 35, Gombrich teaches a locked drug cart that in

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response to reading machine readable indicia on a report, dispenses at least one medical item.

Since medical item dispensers that perform similar functions are well known in the art (See Applicant's supplied art, McLaughlin et al. (4,811,764) and Carter (4,967,928)), it is respectfully submitted that using a medical item dispenser is obvious within the system of Gombrich.

As such, it is respectfully submitted that Appellant appears to view the applied references in a vacuum without considering the knowledge of average skill in the art.

Furthermore, in response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(M) Appellant argues that "the Action relies on Gombrich for comparing user input data to authorized user data, however where does the relied on section teach comparing a user to an authorized user?" in reference to claim 21. The appellant further argues "where does the relied on section teach storing data representative that the at least one medical item has been taken by the one authorized user."

In response, the examiner respectfully notes Gombrich teaches that access to the drugs is controlled by the system (col. 16, line 67-col. 17, line 6). It is respectfully submitted, that a

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system that controls accessibility to the drugs and also requires the input of user identification (col. 17, lines 6-10), is clearly checking to ensure the user is an authorized user. As such "comparing a user to an authorized user" is clearly obvious in the system of Gombrich.

In response to appellant's argument of, "where does the relied on section teach storing data representative that the at least one medical item has been taken by the one authorized user," the examiner respectfully submits, that Gombrich does teach this feature. Appellant argues that the relied on section (col. 17, lines 12-14) indicates that the drug "remains until" the nurse takes it and therefore how can the relied on section teach storing that medical item has been taken by the nurse when the nurse has not yet taken the medical item. It is respectfully submitted, that the appellant has misinterpreted the teachings of Gombrich. Gombrich specifically states that after the narcotics have been removed by the nurse, that "the system now has checked the drug out from the cart and has put it into the nurse's inventory, where it will remain until she administers the drug to the patient." In particular, note that the drugs have already been removed by the nurse and that the indication of the drug in the nurse's inventory file remains there not until the nurse has "taken" the drug but until the nurse has "administered" the drug.

(N) With respect to claims 3, 5-11, 13-15, 22-25 and 27 the Examiner is concerned that, aside from merely alleging that certain claimed features are not anticipated by Gombrich or obvious over Gombrich and Moulding essentially in the form of blanket statements, Appellant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language

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of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Appellant has failed to specifically point out how the language of the claims patentably distinguishes them from the applied references. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

As such, the Examiner maintains that the limitations of claims 3, 5-11, 13-15, 22-25 and 27 are taught by the applied prior art of record as described above and incorporated herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Milan Kapadia

mk

March 11, 2004

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data to be replaced. Text-based applications such as word processors typically include search-and-replace commands. In such operations, both old and new data must be specified, and search-and-replace procedures may or may not be sensitive to uppercase and lowercase, depending on the application program. *See also* search, search and replace.

report The presentation of information about a given topic, typically in printed form. Reports prepared with computers and appropriate software can include text, graphics, and charts. Database programs can include special software for creating report forms and generating reports. Desktop publishing software and laser printers or typesetting equipment can be used to produce publication-quality output.

report generator A type of application, commonly part of a database management program, that uses a report "form" created by the user to lay out and print the contents of a database. A report generator is used to select specific record fields or ranges of records, to make the output attractive, and to specify such features as headings, running heads, page numbers, and fonts.

repository A collection of information about a computing system; a superset of a data dictionary. *See also* data dictionary.

reprogrammable PROM *See* EPROM.

Request To Send *See* RTS.

required hyphen *See* hyphen.

reserve accumulator An auxiliary storage register, generally used to store the intermediate results of an extended calculation.

reserved character A keyboard character that has a special meaning to a program and normally cannot be used in assigning names to files, documents, and other user-generated tools such as macros. Characters commonly reserved for special uses include the asterisk (*), forward slash (/), backslash (\), question mark (?), and broken vertical bar (|).

reserved word A word that has special meaning to a program or in a programming language. Reserved words usually include those used for control statements (IF, FOR, END), data declarations,

and the like. A reserved word can be used only in certain predefined circumstances; it cannot be used in naming documents, files, labels, variable names, or user-generated tools such as macros.

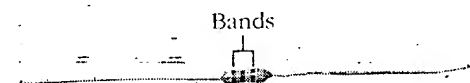
reset button A device that restarts a computer without turning off its power. Many PC compatibles have a button on the front panel of the system unit for this purpose. Most Apple Macintosh computers have two buttons, one for resetting the computer and one (called the programmer's switch) to allow programmers to use the system monitor.

resident font *See* internal font.

resident program *See* terminate-and-stay-resident program.

resistance The ability to impede (resist) the flow of electric current. With the exception of superconductors, all substances have a greater or lesser degree of resistance. Substances with very low resistance (such as metals) conduct electricity well and are called conductors. Substances with very high resistance (such as glass and rubber) conduct electricity poorly and are called nonconductors or insulators.

resistor A circuit component designed to provide a specific amount of resistance to current flow. *See the illustration.*



Resistor.

The bands indicate the resistance in ohms, as well as tolerance (the margin of error from the amount of resistance indicated by the bands).

resolution The clarity or fineness of detail attained by a monitor or a printer in producing an image. In relation to computer monitors, resolution is defined as the number of pixels per unit of measurement (such as inch or centimeter) on a video display. The word *resolution* is commonly used to denote the total number of pixels displayed horizontally or vertically on the video display. By this definition, common screen resolutions for IBM PCs and compatible computers and Apple Macintosh computers are as follows:



teleconferencing The use of audio, video, or computer equipment linked through a communications system to enable geographically separated individuals to participate in a meeting or discussion.

telecopying See fax.

telematics From the French *télématique*; a term used in communications for the combination of computers and telecommunications.

telephony Telephone technology; the conversion of sound into electrical signals, its transmission to another location, and its reconversion to sound, with or without the use of connecting wires.

teleprocessing A term originated by IBM; the use of a terminal or computer and communications equipment to access computers and computer files located elsewhere.

teletext All-text information broadcast by a broadcast or cable television station to a subscriber's television set.

teletype mode A mode of operation in which a computer or an application limits its actions to those characteristic of a teletype machine. On the display, for example, teletype mode results in alphanumeric characters simply being "typed" on the screen, one letter after the other. The cursor advances to a new line when necessary, and the screen scrolls upward when necessary, but there is no provision for such features as color or the ability to move the cursor freely about the screen. Similarly, a computer told to treat a printer as if it were a teletype machine would send text to the printer in the simplest possible form: It would include necessary instructions such as carriage returns and linefeeds but little else in the way of formatting.

teletypewriter See TTY.

template A pattern or form. An application package, for example, might include an overlay for the keyboard that defines special keys and key combinations. In flowcharting, a template is a form for tracing symbols and arrows. In image processing, a template is a pattern that can be used to identify or match a scanned image. In spreadsheet programs, a template is a pre-designed spreadsheet that contains formulas, labels,

and other elements and can be used simply by inserting information in the appropriate locations. In MS-DOS, the template is a small portion of memory that holds the most recently typed MS-DOS command; this command can be edited with the F1 through F5 function keys.

temporary file Also called a temp file. A scratch file: a file created either in memory or on disk—by the operating system or some other program—to be used during a session and then discarded.

temporary storage A region in memory or on a storage device that is temporarily allocated for storing intermediate data in a computational, sorting, or transfer operation.

ten's complement A number in the base-10 system that is the true complement of another number and is derived either by subtracting each digit from 1 less than the base and adding 1 to the result or by subtracting each number from the next higher power of the base. For example, the ten's complement of 25 is 75, and it can be derived either by subtracting each digit from 9, which is 1 less than the base ($9 - 2 = 7$, $9 - 5 = 4$) and then adding 1 ($74 + 1 = 75$) or by subtracting 25 from the next higher power of 10, which is 100 ($100 - 25 = 75$). See also complement.

tera- Abbreviated T. A prefix meaning 10^{12} ; 1 trillion in the American numbering system, 1 million million in British numbering. See also terabyte.

terabyte Abbreviated TB. A measurement used for high-capacity data storage. One terabyte equals 2^{40} , or 1,099,511,627,776, bytes, although it is commonly interpreted as simply one trillion bytes.

terminal A device consisting of a video adapter, a monitor, and a keyboard. The adapter and monitor and sometimes, although less commonly, the keyboard are usually combined in one unit. A terminal does little or no computer processing on its own; instead, it is connected to a computer with a communications link over a cable. Keyboard input is sent from the terminal to the computer; video output is sent from the computer to the terminal. Terminals are used primarily in multiuser systems and today are not often found on single-user personal computers. See